

Notice of Allowability

Application No.

10/736,866

Applicant(s)

MICHELSON, GARY K.

Examiner

Eduardo C. Robert

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to application filed on 12/16/03.
2. ☒ The allowed claim(s) is/are 1-30.
3. ☒ The drawings filed on 16 December 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 12/16/03
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


EDUARDO C. ROBERT
PRIMARY EXAMINER

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest, an interbody spinal implant formed of bone and having an asymmetrical leading end; trailing end opposite the leading end; a length along a mid-longitudinal axis between leading end and trailing end; opposed portions between the leading and trailing ends adapted to be placed within the disc space to contact and support the adjacent vertebral bodies, wherein the opposed portions are non-arcuate along at least a portion of the length of the implant and each of the opposed portions having at least one opening therein; an interior facing side wall; an exterior facing side wall opposed the interior side wall and a width therebetween, wherein the width is less than approximately one-half of the maximum width of the adjacent vertebral bodies into which the implant is adapted to be inserted, and wherein the interior and exterior side walls are between the opposed portions and the leading and trailing ends, and the interior side wall adapted to be oriented toward another implant when inserted within the disc space; each of the opposed vertebral portions having a vertebral body contacting surface between the at least one opening and at least one of the interior side wall and the exterior side wall, wherein each of the vertebral contacting surfaces are adapted to be placed toward one of the adjacent vertebral bodies, and wherein the opposed portions are spaced apart to define a hollow interior in communication with the openings; the implant has a minimum length as measured from the leading end to the trailing end so that the leading end and the trailing end are adapted to rest upon portions of the

Art Unit: 3732

apophyseal rim when implanted and the implant is adapted to be wholly contained within the disc space when implanted as set forth in claim 1.

It is noted that French Patent 2,724,312, cited by applicant, discloses an implant including many of the features of claim 1, however, it is unclear if the implant is made of bone, and there is no suggestion or disclosure of a minimum length as measured from the leading end to the trailing end so that the leading end and the trailing end, both, are adapted or have the ability to rest upon portions of the apophyseal rim when implanted as required by claim 1. Also, it is unclear if the width between the interior and exterior side walls is less than approximately on-half of the maximum width of the adjacent vertebral bodies into which the implant is adapted to be inserted. Also, it is unclear if the implant is adapted to be wholly contained within the disc when implanted.

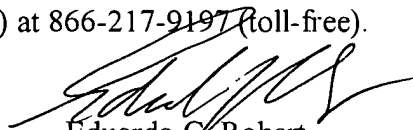
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eduardo C. Robert whose telephone number is 571-272-4719. The examiner can normally be reached on Monday-Friday, 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on 571-273-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3732

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eduardo C. Robert
Primary Examiner
Art Unit 3732

E.C.R.